

Introduced by Senator Steinberg

February 22, 2013

An act to amend Section 11529 of the Government Code, relating to administrative adjudication.

LEGISLATIVE COUNSEL'S DIGEST

SB 670, as introduced, Steinberg. Medical Quality Hearing Panel: limitation on licensee authority: controlled substances.

Existing law, the Administrative Procedure Act, authorizes the administrative law judge of the Medical Quality Hearing Panel to issue an interim order suspending a license, or imposing drug testing, continuing education, supervision of procedures, or other licensee restrictions.

This bill would further authorize the administrative law judge to issue an interim order limiting the authority to prescribe, furnish, administer, or dispense controlled substances. The bill would also declare the intent of the Legislature to enact legislation that would significantly reduce the time in which a disciplinary proceeding against a physician is adjudicated, if the proceeding involves a patient who has died as a result of the overprescribing of controlled substances.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. It is the intent of the Legislature to enact
- 2 legislation that would significantly reduce the time in which a
- 3 disciplinary proceeding against a physician is adjudicated, if the

1 proceeding involves a patient who has died as a result of the
2 overprescribing of controlled substances.

3 SEC. 2. Section 11529 of the Government Code is amended
4 to read:

5 11529. (a) The administrative law judge of the Medical Quality
6 Hearing Panel established pursuant to Section 11371 may issue
7 an interim order suspending a license, ~~or~~ imposing drug testing,
8 continuing education, supervision of procedures, *limitations on*
9 *the authority to prescribe, furnish, administer, or dispense*
10 *controlled substances*, or other license restrictions. Interim orders
11 may be issued only if the affidavits in support of the petition show
12 that the licensee has engaged in, or is about to engage in, acts or
13 omissions constituting a violation of the Medical Practice Act or
14 the appropriate practice act governing each allied health profession,
15 or is unable to practice safely due to a mental or physical condition,
16 and that permitting the licensee to continue to engage in the
17 profession for which the license was issued will endanger the
18 public health, safety, or welfare.

19 (b) All orders authorized by this section shall be issued only
20 after a hearing conducted pursuant to subdivision (d), unless it
21 appears from the facts shown by affidavit that serious injury would
22 result to the public before the matter can be heard on notice. Except
23 as provided in subdivision (c), the licensee shall receive at least
24 15 days' prior notice of the hearing, which notice shall include
25 affidavits and all other information in support of the order.

26 (c) If an interim order is issued without notice, the administrative
27 law judge who issued the order without notice shall cause the
28 licensee to be notified of the order, including affidavits and all
29 other information in support of the order by a 24-hour delivery
30 service. That notice shall also include the date of the hearing on
31 the order, which shall be conducted in accordance with the
32 requirement of subdivision (d), not later than 20 days from the
33 date of issuance. The order shall be dissolved unless the
34 requirements of subdivision (a) are satisfied.

35 (d) For the purposes of the hearing conducted pursuant to this
36 section, the licensee shall, at a minimum, have the following
37 rights:

38 (1) To be represented by counsel.

1 (2) To have a record made of the proceedings, copies of which
2 may be obtained by the licentiate upon payment of any reasonable
3 charges associated with the record.

4 (3) To present written evidence in the form of relevant
5 declarations, affidavits, and documents.

6 The discretion of the administrative law judge to permit
7 testimony at the hearing conducted pursuant to this section shall
8 be identical to the discretion of a superior court judge to permit
9 testimony at a hearing conducted pursuant to Section 527 of the
10 Code of Civil Procedure.

11 (4) To present oral argument.

12 (e) Consistent with the burden and standards of proof applicable
13 to a preliminary injunction entered under Section 527 of the Code
14 of Civil Procedure, the administrative law judge shall grant the
15 interim order where, in the exercise of discretion, the administrative
16 law judge concludes that:

17 (1) There is a reasonable probability that the petitioner will
18 prevail in the underlying action.

19 (2) The likelihood of injury to the public in not issuing the order
20 outweighs the likelihood of injury to the licensee in issuing the
21 order.

22 (f) In all cases where an interim order is issued, and an
23 accusation is not filed and served pursuant to Sections 11503 and
24 11505 within 15 days of the date in which the parties to the hearing
25 on the interim order have submitted the matter, the order shall be
26 dissolved.

27 Upon service of the accusation the licensee shall have, in addition
28 to the rights granted by this section, all of the rights and privileges
29 available as specified in this chapter. If the licensee requests a
30 hearing on the accusation, the board shall provide the licensee with
31 a hearing within 30 days of the request, unless the licensee
32 stipulates to a later hearing, and a decision within 15 days of the
33 date the decision is received from the administrative law judge, or
34 the board shall nullify the interim order previously issued, unless
35 good cause can be shown by the Division of Medical Quality for
36 a delay.

37 (g) Where an interim order is issued, a written decision shall be
38 prepared within 15 days of the hearing, by the administrative law
39 judge, including findings of fact and a conclusion articulating the

1 connection between the evidence produced at the hearing and the
2 decision reached.

3 (h) Notwithstanding the fact that interim orders issued pursuant
4 to this section are not issued after a hearing as otherwise required
5 by this chapter, interim orders so issued shall be subject to judicial
6 review pursuant to Section 1094.5 of the Code of Civil Procedure.
7 The relief which may be ordered shall be limited to a stay of the
8 interim order. Interim orders issued pursuant to this section are
9 final interim orders and, if not dissolved pursuant to subdivision
10 (c) or (f), may only be challenged administratively at the hearing
11 on the accusation.

12 (i) The interim order provided for by this section shall be:

13 (1) In addition to, and not a limitation on, the authority to seek
14 injunctive relief provided for in the Business and Professions Code.

15 (2) A limitation on the emergency decision procedure provided
16 in Article 13 (commencing with Section 11460.10) of Chapter 4.5.